Filed 5/12/10 G.P. v. Super. Ct. CA2/4

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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| G. P.,<br><br>Petitioner,<br><br>v.<br><br>THE SUPERIOR COURT OF LOS ANGELES COUNTY,<br><br>Respondent;<br><br>LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,<br><br>Real Party in Interest. | B221856<br><br>(Los Angeles County Super. Ct. No. CK72977) |

ORIGINAL PROCEEDINGS; petition for extraordinary writ. D. Zeke Zeidler, Judge. Petition denied.

Law Office of Emma Castro, Ellen L. Bacon and L. Steven Lory for Petitioner.

No appearance for Respondent.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel and Sarah Vesecky, Deputy County Counsel, for Real Party in Interest.

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## FACTUAL AND PROCEDURAL BACKGROUND

A. *Detention*

Petitioner G. P. (Mother) is the mother of T. M. and Andrea E.[1] The family came to the attention of the Department of Children and Family Services (DCFS) on May 12, 2008, when Andrea, then approximately 15 months old, was admitted to the hospital suffering from a swollen and blistered foot.[2] The blister was reported to be "the size of a golf ball." Upon examination, Andrea was found to have two fractured bones near her ankle.

On the day the children were detained, Mother was questioned about Andrea's injuries by authorities and the caseworker. Mother stated that Andrea had fallen while playing with a push toy the day before. Her boyfriend, Winston H., said that Andrea had injured her foot two months earlier.[3] The physician who examined Andrea stated that Mother's statement concerning how Andrea's injuries

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[1] T.'s father, Eddie M., and Andrea's father, Kenneth E., are not parties to this proceeding.

[2] T. was four at the time of the intervention.

[3] Mother later changed her version of events, agreeing with Winston that Andrea's leg had been injured months earlier. T. was not interviewed at the time of the detention, but subsequently stated that Winston had burned Andrea's foot on the stove in Mother's presence. Andrea's father, Kenneth E., also interviewed at a later point in time, reported to the caseworker that Mother had told him Winston had burned Andrea's foot and had also burned her with cigarettes.

occurred was not consistent with the injuries and that he could not rule out abuse or neglect.

At the time of DCFS intervention, Mother was pregnant.[4] The caseworker observed that Mother had bruises on her arm and neck. The caseworker interviewed family members and friends and was informed that Mother had reported having been physically abused by Winston on numerous occasions, including having been kicked in the stomach while she was pregnant. T. also reported seeing Winston hit and kick Mother in the stomach. Mother's friend, Hazel L., reported that Mother had been choked by Winston in the presence of the children and that Winston had beaten Mother while she was holding Andrea.[5] Hazel further reported that Andrea's leg had been injured for at least a week, that Andrea had suffered a leg injury approximately one year earlier, and that Mother and Winston used marijuana on a daily basis. Mother denied that the children had been abused. She also denied domestic abuse.[6] Mother admitted marijuana use, but denied using it regularly and denied using it when she was pregnant.

B. *Jurisdiction/Disposition*

Prior to the jurisdictional hearing, the court received reports concerning Andrea's injuries from appointed expert Anthony Shaw, M.D. Dr. Shaw opined

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[4] The baby, Winston, Jr., was born in May 2008. He and Mother tested positive for marijuana. DCFS filed a petition and detained Winston. In April 2009, Winston died while in the care of a paternal relative, apparently as the result of abuse.

[5] Hazel was described in the reports as Winston's aunt and T.'s godmother. Hazel had been caring for T. under an informal arrangement with Mother for the 18 months prior to DCFS's intervention.

[6] Winston admitted that police had been called in 2007 due to a domestic violence altercation with Mother.

that the version of events related by Mother and Winston did not account for the injuries, particularly the blistering. Dr. Shaw concluded that the fractures in Andrea's ankle had occurred within hours or days of her examination at the hospital on May 12, and not months before as Mother and Winston had reported. From the nature of the fractures, Dr. Shaw did not believe that they were the result of an accidental fall. His report stated that the fractures "would require more force than is likely to occur in a simple fall . . . ." However, Dr. Shaw could not entirely rule out an accidental cause.

At the September 2008 jurisdictional/dispositional hearing, the court found jurisdiction over the children warranted under Welfare and Institutions Code section 300, subdivision (a) (serious physical harm), (b) (failure to protect), (e) (severe physical abuse of child under five), (i) (cruelty) and (j) (abuse of sibling).[7] The court specifically found that Andrea's injuries were "consistent with non-accidental trauma," that "[Mother's] explanation of the manner in which the child sustained the [] injuries [was] inconsistent with the child's injuries," and that "the child's injuries would not ordinarily occur except as the result of deliberate, unreasonable and neglectful acts by [Mother]." The court further found that Mother and Winston had a history of domestic violence and of engaging in violent altercations in the presence of the children, and that by allowing Winston to have unlimited access to the children, Mother had failed to protect them. The court also found that Mother had a history of substance abuse and was a daily abuser of marijuana.

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[7] Statutory references are to the Welfare and Institutions Code.

The court ordered the following reunification services for Mother: individual counseling to address case issues, drug counseling, random drug testing, parenting classes and counseling to address domestic violence.

C. *Reunification Period*

In June 2008 and January 2009, Mother signed documents confirming she had received referrals for counseling, drug testing, domestic violence programs and parent education classes. The caseworker reported that Mother had completed parenting classes in November 2008. Mother was scheduled to begin counseling for individual and domestic violence issues. Mother reported she had begun living at Reality House, a sober living home. Once confusion over the location of her testing site was cleared up, Mother began testing clean. At the January 2009 six-month review hearing, the court found that Mother was in partial compliance with the case plan and ordered DCFS, pursuant to its recommendation, to provide further reunification services for Mother.

In April 2009, after the death of Winston, Jr., DCFS conducted a court-ordered pre-release investigation to determine whether to release Andrea and T. to Mother. Mother reported she was homeless. In addition, she had missed multiple drug tests in January, February and April 2009 and DCFS could not confirm that she had completed individual counseling or counseling to address domestic violence.[8] DCFS recommended against placement with Mother at that time.

In June 2009, prior to the 12-month review hearing, the caseworker reported that Mother had been participating in counseling to address domestic violence through Personal Involvement Center since December 2008, but that Mother had

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[8] Mother had one clean test in March 2009 and another test was not completed due to the laboratory's mishandling of the sample.

not completed the program. Mother said she was also receiving drug counseling through the Personal Involvement Center, but a letter from the Center did not mention drug counseling. Mother subsequently told the caseworker that she was not attending a drug rehabilitation program and denied that she had been ordered to do so. In a July 2009 supplemental report, the caseworker reported that Mother had completed domestic violence counseling through the Lord's Missionary Christian Ministry (LMCM).[9] In addition, she appeared to have found stable housing and reported obtaining individual counseling through His Sheltering Arms. Mother continued to test clean when she appeared at the site for testing, but missed approximately half of her scheduled tests. At the July 2009 12-month review hearing, the court ordered further reunification services, in accordance with DCFS's recommendation.

In October 2009, the caseworker reported that Mother had failed to maintain consistent contact with DCFS during the preceding months and appeared to be pregnant. Although she had enrolled in drug and individual counseling programs at His Sheltering Arms in June, she had been discharged for lack of attendance. In August 2009, she reportedly began a new drug counseling program with LMCM. According to Pastor Simpson-White, Mother had missed some classes. Mother had a number of "no show[s]" for scheduled drug tests in July, August and September 2009, and stated she could no longer test because she did not have valid identification and could not afford to obtain it. Mother had not been visiting the children -- who had been moved in August from a foster home near Mother to Andrea's paternal grandmother's home in Moreno Valley in Riverside County. The caseworker reported that the grandmother transported the children to Los

[9] There was a letter in the record from Pastor Annette Simpson-White of LMCM, stating that Mother had completed 12 sessions of domestic violence counseling as of June 15, 2009, and that the certificate of completion would be available on June 30, 2009.

Angeles every weekend, but that Mother had not taken advantage of these opportunities to visit and had seen the children only once since August. Because Mother had not complied with the court-ordered case plan and had not resolved the issues that brought the family to the attention of DCFS, the caseworker recommended termination of reunification services.

In December 2009, the caseworker again reported that Mother had failed to maintain contact with DCFS. The report stated that Mother initially denied, but later admitted, being pregnant and that Mother said she planned to give birth in Las Vegas to avoid DCFS involvement.[10] Mother asked for a bus pass, but when told that transportation assistance was to be used for participation in court-ordered services and visitation, she was unable to specify the services in which she was then participating. The caseworker discussed the grandmother's report that Mother was not participating in visitation despite the grandmother's transportation of the children to Los Angeles every weekend to facilitate it. Mother denied the report and stated that she was visiting the children. The caseworker made numerous attempts to contact Pastor Simpson-White to discuss Mother's progress, but Simpson-White did not respond to telephone calls or letters.[11] Because Mother was not visiting the children, had not completed individual counseling, had numerous drug-testing "[n]o [s]hows" and had not tested clean since June 2009, the caseworker again recommended that her reunification services be terminated.

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[10] In the delivered service log, the caseworker stated that the children's grandmother/caregiver "heard a rumor that the child belongs to Winston Sr."

[11] Mother's counsel was also unsuccessful in his efforts to subpoena Pastor Simpson-White to appear at the 18-month review hearing. Pastor Simpson-White emailed a letter dated December 28, 2009, stating that Mother had been attending a 26-week drug prevention and intervention class as well as 4 of 12 individual counseling sessions and was expected to receive certificates of completion on January 25, 2010.

At the contested 18-month review hearing held January 15, 2010, Mother testified that she only missed drug tests for good reason, such as having to attend court hearings, and that she asked the caseworker to order "on demand" drug tests on those occasions. She stated that contrary to the caseworker's report, she had tested clean in October, November and December 2009. She denied any current use of alcohol or drugs. She said she had been seeing Pastor Simpson-White for individual and drug counseling and was scheduled to finish on January 25, 2010. According to Mother, the individual counseling had begun in November 2009. Mother testified that she had completed a domestic violence counseling program through LMCM, but was vague when asked to describe what she had learned from it. She did not mention Winston or state that she had discussed that abusive relationship with Pastor Simpson-White.[12]

With respect to visitation, Mother testified that the grandmother/caregiver did not bring Andrea to Los Angeles and that it was difficult for her to contact the grandmother to arrange a place to meet. Mother also said that the grandmother interfered with her attempts to speak with the children telephonically. Mother said she had reported her difficulties with visitation and contact to the caseworker on December 28. Mother claimed she had not seen or spoken to Winston for "a long time."

The court found that return of the children to the physical custody of Mother would create a substantial risk of detriment and that reasonable services had been provided. In issuing its ruling, the court stated that although Mother had partially complied, her progress was "clearly not enough that the children [c]ould be safely returned to her." The court noted that "the therapist" (apparently referring to

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[12] There was no evidence presented that Pastor Simpson-White had ever been advised of the specific bases for DCFS intervention.

Pastor Simpson-White) had not said in her letter that the children could be safely returned or that Mother had resolved the issues that led to DCFS intervention. The court further observed that it was unclear whether Mother's therapist fully understood the case issues. The court terminated reunification services and scheduled a section 366.26 hearing.

## DISCUSSION

In her petition for writ, Mother contends that substantial evidence did not support the juvenile court's findings that DCFS provided reasonable reunification services or that the children were at substantial risk of detriment if returned to her. We disagree.

### A. *Reasonableness of Reunification Services*

The reunification plan "must be specifically tailored to fit the circumstances of each family [citation], and must be designed to eliminate those conditions which led to the juvenile court's jurisdictional finding. [Citation.]" (*In re Dino E*. (1992) 6 Cal.App.4th 1768, 1777.) We review the juvenile court's finding that a parent was provided reasonable reunification services under the substantial evidence standard. (*In re Christina A.* (1989) 213 Cal.App.3d 1073, 1080.) According to the jurisdictional findings of the court, Andrea suffered severe physical abuse and was subjected to cruelty as the result of Mother's deliberate acts and neglect, and both children were in danger of suffering physical and emotional detriment in the future as the result of Mother and Winston's domestic altercations, Mother's failure to protect the children from Winston, and Mother's drug abuse. The court ordered Mother to participate in parenting classes, individual counseling, drug counseling and testing, and counseling to address domestic violence. This was an

appropriate plan which properly took into account the jurisdictional findings and the needs of the family.

Once the court orders a reunification plan, DCFS must "make a good faith effort to develop and implement [it]. [Citation.]" (*Armando L. v. Superior Court* (1995) 36 Cal.App.4th 549, 554.) The caseworker should offer services designed to remedy the problems, maintain reasonable contact with the parents, and make "'reasonable efforts to assist the parents in areas where compliance prove[s] difficult . . . .' [Citation.]" (*Id.* at p. 555, quoting *In re Riva M.* (1991) 235 Cal.App.3d 403, 414, italics omitted.) Here, the caseworker provided Mother referrals for services and maintained reasonable contact. At various times, Mother initiated the required programs. At no point did Mother complain of difficulty in complying with the case plan or any aspect of it. The petition contends that the caseworker failed to communicate with Mother between July and October 2009. Mother did not raise this factual issue at the hearing, and the petition does not explain how this alleged lack of communication prevented Mother from completing the reunification program's requirements. The record reflects that during this period or shortly before: (1) Mother commenced -- but failed to complete -- drug and individual counseling programs at His Sheltering Arms; (2) Mother commenced -- and again failed to complete -- drug counseling through LMCM; and (3) Mother completed a program of domestic violence counseling through LMCM. Accordingly, even if Mother's allegation is true, there is no evidence that any lack of communication by the caseworker left her unaware of what needed to be accomplished during this period. Moreover, any failure on the part of the caseworker to initiate communication would not excuse Mother's nonperformance. Once a parent is informed of the proceedings and the requirements of the court-ordered plan, it is "the obligation of the parent to communicate with the Department and participate in the reunification process."

(*In re Raymond R.* (1994) 26 Cal.App.4th 436, 441; see also *In re Mario C.* (1990) 226 Cal.App.3d 599, 604 ["Reunification services are voluntary . . . and an unwilling or indifferent parent cannot be forced to comply with them. [Citations.]"].)

The petition further contends that DCFS failed to facilitate visitation and notes that the children were moved to a distant location not long before the 18-month review hearing. The court's order terminating reunification services was not based on failure to visit the children. Moreover, the record reflects that the children were regularly brought to Los Angeles by their caretaker -- Andrea's paternal grandmother -- and that Mother failed to avail herself of the opportunity to visit with them. The court was not obliged to credit Mother's testimony to the contrary.[13]

Finally, the petition contends that the court should have considered extending reunification services beyond the statutorily-imposed 18-month deadline due to the tragic death of Winston, Jr. in April 2009. Under the governing statutes, reunification services may be provided to a parent for a maximum period of 18 months.[14] (§ 366.21, subd. (f), (g)(1); § 361.5, subd. (a)(3); *Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1509). The court may not extend services beyond the 18-month statutory period, absent "extraordinary circumstances" which "'prevented the parent from participating in the case plan.'" (*Denny H. v. Superior Court*, *supra*, at p. 1510, quoting *Andrea L. v Superior Court* (1998) 64

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[13] The same is true with respect to Mother's contention that she asked the caseworker to schedule "on demand" tests, mentioned without further discussion in the petition. The court was not obliged to credit Mother's testimony on this point.

[14] For a child under the age of three, such as Andrea, the court may terminate reunification services after as few as six months. (§ 366.21, subd. (e); *M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 174.)

Cal.App.4th 1377; accord, *In re Brequia Y.* (1997) 57 Cal.App.4th 1060, 1067-1068.) "The Legislature has recognized there must be a limitation on the length of time a child has to wait for a parent to become adequate in order to prevent children from spending their lives in the uncertainty of foster care." (*Andrea L. v. Superior Court*, *supra*, at p. 1388.) The record reflects that in June 2009, Mother, then participating in individual counseling, was offered specialized grief counseling. Mother apparently did not take advantage of the offer. She never mentioned Winston, Jr.'s death as the basis for failing to initiate or complete any facet of the program. She did not mention Winston, Jr. in her testimony at the 18-month review hearing or contend that any event or series of events had interfered with her attempt to complete the program. Accordingly, the court had no basis for extending the 18-month deadline.

B. *Substantial Risk of Detriment*

At the 18-month review hearing, also known as the "permanency review hearing," the dependency court "shall order the return of the child to the physical custody of his or her parent . . . unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child."[15] (§ 366.22, subd. (a).) "In determining whether it would be detrimental to return the child at the 18-month review, the court must consider whether the parent participated regularly in any treatment program set forth by the plan, the 'efforts or progress' of the parent, and the 'extent' to which the parent

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[15] If "the child is not returned to [the parent] at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child." (§ 366.22, subd. (a).)

'cooperated and availed himself or herself of services provided.' (§ 366.22, subd. (a).)" (*Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1748; accord, *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1340.) "The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental." (§ 366.22, subd. (a).) A juvenile court's finding of detriment is reviewed for substantial evidence. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199-200.)

Mother contends that the court's finding of substantial risk of detriment if the children were returned was not supported. As the above-cited authorities make clear, failure to adequately address the issues that led to DCFS intervention is sufficient to support a finding of detriment. Mother began and failed to complete an in-house drug rehabilitation program at Reality House in late 2008/early 2009. In June 2009, she alternately claimed to be enrolled in a new program and denied having been ordered to undergo drug counseling. Later that month, she enrolled in a program with His Sheltering Arms and was subsequently discharged for lack of attendance. In August 2009, she enrolled in the LMCM program in which she claimed to be involved at the time of the 18-month hearing and began almost immediately to miss classes. Throughout this period, she consistently missed drug tests. With respect to individual counseling, Mother did not begin to participate in counseling until the middle of 2009. She dropped that program and had not completed the required counseling sessions as of the time of the 18-month review hearing. There was no evidence that the one portion of the reunification program she appeared to have completed after several false starts -- the domestic violence program with LMCM -- seriously addressed the issues that led to the children's detention, such as her abusive relationship with Winston. Under these facts, the court's finding that the children were at risk due to Mother's failure to make

sufficient progress in court-ordered programs was supported by substantial evidence.

## DISPOSITION

The petition is denied.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.